IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No 42 of 1983
with
CIVIL APPLICATION NO. 671 OF 1983

For Approval and Signature:

HON'BLE MR.JUSTICE SHARAD D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BABALBHAI LAXMANDAS PATEL

Versus

JETHIBEN LAXMIDAS GAURI

Appearance:
1. Appeal from Order No. 42 of 1983
MS VASUBEN P SHAH for Petitioner No. 1
RULE UNSERVED for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE SHARAD D.DAVE

Date of decision: 06/11/2003

ORAL JUDGEMENT

1. Heard Ms.K.J.Brahmbhatt learned advocate for

Ms.Vasuben Shah learned advocate for the appellant. The court's order dated 18.02.83 was sent to the respondent by regd. post however, in absence of any acknowledgment produced on record, it is difficult to know whether it is served or not. After a long time, court again ordered for service of notice on the respondent by passing order on 22.04.2003. This was served by affixing the same on 30.06.2003. The respondent failed to remain present in person or through advocate.

2. Being aggrieved and dissatisfied with the judgment and order dated 30.10.82 passed below exh. 1 in Special Civil Suit no. 30 of 1980 by the learned Civil Judge (S.D.), Mehsana by ordering the appellant to take back the plaint papers for presentation to proper court in exercise of due discretion, this appeal from order is filed.

3. The present appellant had filed one civil application no. 671/83 wherein this court has passed order on 18.02.1983 as under "Rule. Ad-interim relief of the stay of the impugned order". Thereafter there is no proceeding shown on the order sheet till today.

4. It is the grievance of the appellant-original plaintiff that he was in possession of the suit property and he filed special civil suit no. 30/80 before learned Civil Judge (S.D.), Mehsana for cancelling the sale deed executed between the appellant and respondent. The court framed issues at exh. 14 wherein issue no. 2 is as under:

" Whether this court has no jurisdiction to entertain, hear and try the present suit as contended by defendant in w.s. exh. 11?"

The learned Court relied on Sec. 20 of the Civil Procedure Code and held that the original defendant is residing at Bombay. That no cause of action or part cause of action has arisen in the jurisdiction of this court and therefore answered issue no. 2 in the affirmative and held that this court has no jurisdiction to try and hear the suit and further ordered to return back the papers to the appellant-original plaintiff.

5. Ms.Brahmbhatt learned advocate for the appellant has submitted that the cause of action started at Mehsana and ended at Bombay where the execution of the document was completed. Therefore, in her submissions, both courts Mehsana as well as Bombay has jurisdiction to try and hear the suit. She has more or less relied on Sec. 16 (d) of the C.P.C. and submitted that the plaintiff has rightly filed suit in the Mehsana court for

determining his right on the suit property situated within the local jurisdiction of the court. While distinguishing Sec. 20 of the Code with Sec. 16 of the Code, the learned advocate for the plaintiff submitted that where other suits to be instituted, where defendants reside or cause of action arises Sec. 20 would apply, however Sec.16 would apply if right or interest in immovable property is to be determined. Hence, the order passed by the learned trial court be quashed and set aside.

6. She has relied on decision reported in case of Ananda Bazar Patrika ltd. and others V/s Buswanath Prasad Maitin reported in AIR 1986 Patna 57 and submitted that in the facts before Patna High Court there was not only question for specific performance of contract but also with prayer for possession and accordingly Sec. 16(d) was applicable.

7. I have gone through the authority cited by the learned advocate for the appellant and the plaint attached with the paper book. While going through the plaint, it appears that the plaintiff purchased the suit property in the month of December 1975 from one Mr.Ishwarlal Shambhudas and he got it transferred in his name. The present opponent-defendant was at the relevant time headmistress in Brahmkumaris Ishwariya Vishwa Vidyalaya at Mehsana and as per the allegations made in the plaint, the defendant and her husband took the plaintiff in confidence and by hook or crook got the documents executed, without making any payment to the plaintiff, in favour of respondent. Under the circumstances, when the plaintiff came to know regarding the malafide intention of the defendant, he filed the suit for cancelling the sale deed of the property which was in his possession by filing suit in the Mehsana Court.

8. Under Sec. 16 of the C.P.C. the suit should be instituted where the property is situated. In this section property situated means property situated in India. Sec. 20 of the C.P.C. refers to other suits which are to be instituted where defendants reside or cause of action arises. While reading sec. 20 it appears that other suits other than immovable property can be filed under this Section. Assuming for the sake of argument that the defendant is staying at Bombay to earn her livelihood or that sale deed was executed at Bombay and therefore alleged fraud was perpetuated at Bombay, then also position remains that the property is situated at Mehsana and therefore Mehsana court has also

jurisdiction to try and hear the suit.

9. In view of the aforesaid discussion, I am of the opinion that the order of the learned trial court is required to be set aside. Accordingly it is set aside. The issue no. 2 which is answered by the learned trial court in the affirmative is required to be answered in the negative.

10. This appeal from order is allowed. The matter is of 1980. Therefore the learned trial court is directed to dispose of the special civil suit no. 30/80 on priority basis and dispose it of as early as possible. This appeal from order is disposed of with aforesaid direction.

11. In view of the order in appeal from order, Civil application no. 671 of 1983 is disposed of. Ad-interim relief granted earlier is confirmed.

(SHARAD D DAVE, J)

srilatha